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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Letter dated April 2001 from the Secretary of State for Foreign Affairs of the Dominican Republic addressed to the President of the Commission on Human Rights

I have the honour to submit herewith the report on the effective functioning of human rights mechanisms in the Dominican Republic.

I would be grateful if you would have this report* circulated as an official document of the fifty-seventh session of the Commission on Human Rights.

(Signed) RHADYS ABREU DE POLANCO
Ambassador

* The annex is reproduced in the form in which it was received, in Spanish and English only.

Annex

Report on the effective functioning of human rights mechanisms (Agenda item 18)

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. In 1966, it adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is now 53 and 35 years respectively since those instruments were adopted and 32 years since the adoption of the American Convention on Human Rights. Our country ratified the International Covenants on 19 January 1978 and the American Convention on Human Rights (also known as the Pact of San José) on 19 April 1978.

Today, there are still some countries that have not ratified those international human rights instruments; others have done so, but have not incorporated in their internal law the rights that they contain. In not a few of the States that do recognize fundamental rights in their constitutions or law, systematic, uncorrected violations occur. It could be said that the acceleration of history that is so apparent in other areas of human activity is less so as regards the recognition and guaranteeing of the fundamental rights of all human beings in the twenty-first century.

There is no denying that the activities of the organisms and specialized agencies of the United Nations and the Organisation of American States have, over the years, been a very important part of the process of creation and consolidation of international legal mechanisms for the protection of human rights, as has been the pressure by those bodies for recognition of those rights in domestic law and for ordinary people's effective enjoyment of them. There is, however, still a long road ahead, for every new historical event entails new threats to people's lives, security, equality and liberty.

Violations, including massive violations, of fundamental rights are not new; what is relatively recent, however, is the general feeling that they are abominations and outrages that are incompatible with human dignity. In this regard, we cannot but welcome the fact that their recognition in legislation and the existence of adequate mechanisms for safeguarding human rights have become the model of democratic legitimacy and are enabling the full and effective enjoyment of civil, political, economic, social and cultural rights.

It is certain that some human rights, whose classification as such derives from western culture, are viewed differently in other cultures or philosophies, but it is no less certain that there exists a common and indivisible nucleus of rights and duties of universal validity and scope. We might mention two: concern for human dignity, and the institutionalization, both internationally and within each country, of a series of effective safeguards. It must not be forgotten that human rights need not only to be defined, but also to be protected, and, as all lawyers know, safeguards are the most effective means of ensuring that a right has genuine force.

From this point of view, the international legal instruments need to be improved and supplemented so as to achieve a codification of human rights that recognizes the common nucleus and makes it explicit (clearly identifiable). It must also be possible to call to account those who infringe human rights and to extend the systems of safeguards so that everyone may avail themselves of them, both nationally and internationally.

It is essential for everyone that their countries' legislators, judiciary and governments see the securing of human rights as their responsibility. That is the most effective means of guaranteeing rights and it is only when it fails to function properly to correct errors that the international machinery should be brought into play.

Particularly since the Second World War, non-judicial safeguards institutions have come to join this judicial machinery.

The institution of ombudsman first appeared and developed in Sweden. From the outset, the ombudsman's mission was to watch closely over compliance with existing laws and standards as well as to monitor public servants' discharge of their duties. To that end, he was entitled to appeal to, and bring actions of any kind before the courts.

While this institution still has its original substance, it has, in each particular instance, been adjusted to the requirements of the social, political and legal systems of the societies that have adopted it. It is its inherent flexibility and features that have made that possible.

The office of ombudsman, whether it is held by one person or by a group, serves to restore the balance between the rights of the individual and the potentially ever wider powers of the authorities. Its raison d'être lies in the fact that traditional remedies such as self-monitoring by the central parliamentary authority and the courts, while essential, are often insufficient.

The institution of ombudsman is, I repeat, a recent phenomenon in our part of the world but it has been spreading rapidly. Today, ombudsmen are human rights defenders with an important role as monitors of administrative action that makes their office a flexible tool for resolving cases of violation of citizens' rights resulting from abuse of authority or failure by public officials to perform their duties.

The existence of a figure entitled to investigate any acts contrary to the standards by which his office is governed and conduct by officials that is incompatible with the ethics of public service enables the development of a culture of accountability for members of government and civil servants.

In addition to its function of protecting human rights, the institution of ombudsman has, in the countries which have adopted it, helped to strengthen the machinery for representation and communication between civil society and government.

The office of ombudsman provides everyone, citizens and foreigners, with a swift, informal, free and directly-accessible means of: submitting their complaints and protests regarding acts or omissions by any organ of government that may be thought to have breached their fundamental rights and public freedoms or constituted an offence; contributing, together with the institutions of the State and civil society, towards the guaranteeing within the context of the rule of law of the security of person and the human rights enshrined in article 8 of the Constitution of the Republic.

Its purpose is to assist in building a free, fairer society by fostering education in, and the defence, promotion and dissemination of human rights in the broadest sense of the term and by promoting the participation of all sectors of society.

Few topics are more closely linked to human rights than that of education and it is for that reason that on 19 August 2000, a mere two days after taking office, His Excellency Mr. Hipólito Mejía, President of the Republic, established by decree the Armed Forces Human Rights Institute, believing as he does that to furnish human rights education is to foster concord and solidarity between individuals and peoples and justice and freedom.